



Memorandum

TO: HONORABLE MAYOR AND
CITY COUNCIL

FROM: Teresa Guerrero-Daley
Robert L. Davis

SUBJECT: INDEPENDENT POLICE AUDITOR'S DATE: April 20, 2004
RECOMMENDATIONS REGARDING
OFFICER-INVOLVED SHOOTINGS
AND RESPONSE FROM THE SAN
JOSE POLICE DEPARTMENT
Council Referral #12-02-03-9.1

Approved

Date

Council District: City-Wide

RECOMMENDATION

It is recommended that the City Council approve the agreement included in the Analysis section of this memorandum between the Independent Police Auditor (IPA) and the Chief of Police concerning the specified policies and procedures related to the review of officer-involved shootings resulting in injury or death to a person and fatal incidents involving San Jose police officers.

BACKGROUND

On December 2, 2003, the Office of the Independent Police Auditor presented its 2003 Mid-Year Report to the City Council. This report made the following recommendations related to the policies, procedures and investigation process related to officer-involved shootings that result in the injury or death of a person:

1. A written policy should be drafted and implemented that designates personnel whose primary focus would be to serve as the liaison to the family of the person injured or killed as the result of an officer-involved shooting.
2. The San Jose Police Department (SJPd) should improve dissemination of information to the public by developing and providing written materials that describe the process, agencies and general information that address frequently asked questions about officer-involved shootings or fatal incidents involving public safety officers.
3. The SJPd should prepare an annual report of the Officer-Involved Shooting Review Panel detailing any policy, procedures, training or other measures that were generated during its deliberations.

4. The SJPD should refrain from making any statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.
5. The IPA should be part of the roll-out team to the scene of an officer-involved shooting.
6. The IPA's review of officer-involved shootings where no citizen complaint is filed should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.
7. The San Jose Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.

Acting Chief of Police Thomas Wheatley submitted a memorandum to the Mayor and City Council, dated November 21, 2003, indicating that the SJPD agreed with the first four of the IPA's recommendations listed above, but disagreed with recommendations number five, six and seven.

The Council approved Mayor Gonzales' memorandum, dated December 1, 2003, recommending that any consideration of implementation of the IPA's recommendations in her Mid-Year Report and any new recommendations related to police use of force and officer-involved shootings be deferred until the new police chief is appointed. The Council also approved the memorandum from Council Members Cortese, Chavez, Gregory and Williams, dated December 2, 2003, recommending the acceptance of the IPA's 2003 Mid-Year Report and directing the City Manager to implement the first four of the IPA recommendations listed above and for all other items to be brought back to Council in April 2004.

ANALYSIS

In response to this direction, the San Jose Police Department has implemented the following specified administrative actions related to the process for officer-involved shootings or fatal incidents with a San Jose police officer:

1. The SJPD Homicide Unit Commander will designate a liaison for the family of a person injured or killed in any officer-involved shooting or fatal incident with a San Jose police officer. The liaison designation will be made a part of the Homicide Unit's written guidelines.
2. The SJPD will develop and provide written material to the general public that describes the officer-involved shooting investigation process, the agencies involved and their roles, and answers to frequently asked questions about officer-involved shootings or fatal incidents involving a public safety officer (i.e. Internet/e-mail brochures/hardcopy brochures).

3. To the extent consistent with the SJPD's general obligation under the Public Records Act to publicly disclose specified information about arrests and incident investigations, the Department will attempt to avoid making statements that appear to predetermine the outcome of the investigation or unnecessarily place the injured or deceased person in a negative light.
4. The SJPD will continue to provide an annual report summarizing the recommendations from the Officer-involved Shooting Review Panel to the Mayor and City Council in conjunction with the IPA's mid-year report. (Chief's Office)

The Chief of Police and the Independent Police Auditor met on March 15, 2004, to discuss the remaining recommendations from the IPA's mid year report, which included the following:

- That the IPA be part of the rollout team to the scene of officer-involved shootings.
- The IPA's review of officer-involved shootings where no citizen complaint is filed should be as thorough as its review of officer-involved shootings where a citizen complaint is filed and should mirror the oversight of citizen complaints.
- The San Jose Municipal Code should be amended to include the IPA on the list of council appointees authorized to enter into contractual agreements.

Recommendations In Agreement

As a result of that discussion, the SJPD and the IPA have agreed to implement the following recommendations to the process for the IPA's monitoring and auditing of the SJPD's administrative investigation of officer-involved shooting incidents or fatal incidents with a public safety officer by the IPA:

1. The IPA will be notified immediately after an officer-involved shooting by the Internal Affairs Commander.
2. The IPA may respond to the scene of the officer-involved shooting and contact the Internal Affairs Commander at the outer perimeter of the crime scene.
3. The IPA and Internal Affairs Commander will then be briefed as to the details of the incident by on-scene personnel.
4. The IPA will be provided with a copy of the Internal Affairs administrative investigation document of the officer-involved shooting for auditing purposes as soon as practical *after* the criminal case has been concluded, but prior to the closing of the administrative investigation.

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5. The IPA will coordinate outreach efforts immediately after an officer-involved shooting incident and the SJPd will ensure that it participates in these forums.
6. The City Manager or the City Attorney as the case may be, will cooperate with the IPA to utilize their respective contracting authority to assist the IPA in obtaining expert consultants for purposes of training, and not for the purpose of reviewing any specific complaint. In the event of a disagreement, or the need for services which cost in excess of \$100,000, the request may be referred to the City Council for decision. This agreement will be evaluated after one year to determine if the IPA's needs are being adequately addressed.

COORDINATION

This memorandum has been coordinated with the Mayor's Office, City Manager and City Attorney.

CEQA

Not a project.

TERESA GUERRERO-DALEY
Independent Police Auditor

ROBERT L. DAVIS
Chief of Police

